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PATENT S/N 09/933,918

REISSUE PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Applicant:	LEE ET AL.	Examiner:	Petitions Examiner Hearn and Examiner Corbin
Serial No.:	09/933,918	Group Art Unit:	1761
Filed	08/21/2001	Docket No.:	8436.18USRE
Confirmation No.:	2055	Original Patent No.:	5,637,345
Title:	METHOD OF MANUFACTURING POWDERED DEER BLOOD		

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**Request under 37 C.F.R. §§182 and 183 - Supplementing the  
New Petition and the Alternative Requests Submitted 30 November 2004**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Petitioners, on 30 November 2004, submitted a newly presented petition with alternative requests for resolving this matter. Petitioners noted the earlier denial of the petition to withdraw the terminal disclaimer recorded against the patent and the finality of that position.

Petitioners now request that the petition and alternative requests filed on 30 November 2004 be considered as a petition on a question not provided for in the rules and as a petition that the rules are suspended to accord Petitioner relief in the interests of justice.

The Office position appears to be that based in large part on the case *Bayer AG v. Carlsbad Technology, Inc.* (a copy of the case was enclosed with earlier petition). The Office has apparently taken the position that the Office is not permitted to change or withdraw a terminal disclaimer **under any circumstances**. We believe the Office has read the *Bayer* case too broadly. The *Bayer* case holds that; (1) a patentee is not entitled to withdrawal of a terminal disclaimer that was correct as filed, but (2) Petitioner is entitled to relief if the disclaimer was incorrect when filed. In this regard, Petitioner asserts that the provisions of the MPEP at § 1490

are similarly overly broad in effect wherever the MPEP section is not consistent with the case law cited above.

Petitioner asserts that the Office interpretation of the case law and MPEP § 1490 are not correctly based on the case law. In the interests of justice, Petitioner requests that the Petition and alternative requests filed on 30 November 2004 should be acted on under 37 C.F.R. §§182 or 183. Petitioner request a resolution of the requests filed 30 November 2004 in order that Petitioner can request further review where appropriate in light of the errors in construing the effect of the rule announced in the case *Bayer AG v. Carlsbad Technology, Inc* set forth in MPEP § 1490.

No harm to the public results since the effect of a terminal disclaimer is known and its correct term is readily apparent to a competent reviewer. By operation of law, the correct application of the terminal disclaimer in a double patenting rejection would result in a term limited to a related patent, not an unrelated patent. Accordingly, the correction of the terminal disclaimer would not change the scope of the claims that is governed by operation of the law of double patenting and terminal disclaimers.

Serious harm does, however, result to the Petitioner if the correction is not made to the disclaimer in the case and the Petitioner loses substantial patent term.

Respectfully submitted,

3 Jan '05  
Date

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